# *Supreme Court of the United States.*

OCTOBER TERM, 1888.

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No. 243.

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EDWARD M. STICKNEY *et als.*
*Appellants,*

*v.*

JEANNIE K. STICKNEY,
*Appellee.*

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## BRIEF FOR APPELLEE.

### STATEMENT OF THE CASE.

This was a bill filed by the complainant below, now the appellee, against the defendants below, now the appellants, as some of the heirs-at-law and next

of kin of her intestate husband, to obtain payment, out of his general estate, of the *corpus*, *without interest*, of her patrimonial and separate property, which she had entrusted to him, during the coverture, to invest for her benefit, but which, without her knowledge and contrary to her directions, he had used, managed and invested, in his own name alone.

The cause was referred to the *Auditor*, (in effect, a *Master*,) of the court below, who reported the complainant a creditor of her husband, in the sum of $78,371.13, in principal alone, but found that the personal estate applicable to this debt, was insufficient for the payment thereof.

The case is here on appeal from a decree of the General Term of the court below, which affirmed the decree of its special Term, confirming the Report of the Auditor, overruling certain exceptions thereto taken by the defendants below, and directing, in view of the insufficiency of the personalty, a sale of the real estate, of the intestate.

*William Stickney* had left college when about 20 years of age, (Id. p. 37, top,) and become a clerk in one of the departments of the government, at Washington. (Id. p. 37, f. 88, pp. 43-44.)

He had afterwards studied law, and in the course of his application to that science, had been employed,

for a year or two, as teacher, or tutor, in the South. (Id. p. 37, f. 87 ; p. 43, bot, p. 84, f. 199.)

Completing his legal studies, in this City, he had entered upon the practice of his profession at St. Louis, (Id. p. 37 f. 88; p. 43 bot.; p. 84 f. 198.) from whence, shortly afterwards, he had, however, returned to Washington. (p. 37, f. 88.)

On the 15th day of January, 1852, (Id. p. 1, f. 2, p. 57, f. 132,—by error, in Rec.—p. 65, f. 152,—*5th* of January,—) Mr. Stickney, then between 24 and 25 years of age, (Id. p. 36, f. 87; p. 43, f. 101; p. 84, f. 198,) had intermarried with the complainant below, a daughter of *Amos Kendall*, a name not now first made known to this court.

Mr. Stickney was then without fortune. (Id. p. 34, f. 82 ; p. 42, f. 98; p. 75, ff. 176-177; p. 84, f. 199.)

To his intended wife, he had "very honorably stated his circumstances," informing her, "that he had no means, and was dependent entirely upon his own exertions." (Id. p. 65, f. 152.)

A year after his marriage, Mr. Stickney was once more a clerk in the government service. (Id. p. 64, f. 150 ; p. 85, f. 200.)

Subsequently, (Id. p. 35, top ; p. 37, f. 88 ; p. 85, f. 201,) about the year 1857, (Id. p. 63, f. 147,) and at a salary of $100 per month, with board for

himself and family, (Id. p. 63, f. 147,) or (as is supposed by a brother residing in Connecticut,) at a salary of about $1500, per annum, (Id. p. 44, f. 102,) Mr. Stickney became clerk, or secretary, to Mr. Kendall, and continued to remain such, during the life of the latter. (Id. p. 85, f. 201.)

Except while for two years, abroad, in company with, (Id. p. 44, f. 102,) and at the expense of, (Id. p. 98, f. 229,) Mr. Kendall, and exclusive of some uncertain sojourn in a dwelling, near Kendall Green, erected—and, afterwards, sold—by Mr. Stickney, (Id. p. 37, f. 88; p. 42, f. 98,) the appellee and her husband had boarded with Mr. Kendall, (Id. p. 37, f. 88; p. 44, f. 102,) from the time of their intermarriage, until the practical completion by Mr. Stickney, in 1869, (Id. p. 64, f. 150; p. 65, f. 152,) with money furnished by his father-in-law, (Id. p. 76, ff. 178–179; p. 87, ff. 205–206,) of the Stickney residence *on M Street*, (Id. p. 37, f. 88,) in which Mr. Kendall expired. (Id. p. 64, f. 150,)

If, after entering into the service of Mr. Kendall, Mr. Stickney was engaged, during the life of his father-in-law, in other remunerative employment, (Id., p. 99, f. 232,) that circumstance remained quite unknown to the only brother of Mr. Stickney, (Id., p. 86, top,) who resided in or near Washington, during that period, (Id. p. 88, f. 208) and is left undisclosed by the record at large.*

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*Upon this question,—though believed to be immaterial to the argument—(Post. pp. 59–63), the evidence is brought together in *Appendix A*, (Post., pp. 59–63.)

Mr. Kendall died, in this City, on the 12th day of November, 1869, (Rec. pp. 57, 63, 65), leaving an estate worth nearly half a million. (Id. p. 111, f. 253.)

What is now familiarly known as our "*Married Women's Act*," had then been in operation but from the 10th day of April, previous. (16 Stat. 45.)

(R. S. D. C; secs. 727-730.)

The will of Mr. Kendall designated his *four daughters*, as the residuary devises and legatees of his estate.

(Rec. p. 9, ff. 22-23; Id., p. 62, f. 145.)

It provided, that payment of such debts as might be due to him *from any of his daughters*, or their husbands, should not be exacted *in money*, but should be adjusted in the distribution to be made between the daughters, of certain descriptions of *bonds*.

(Id. p. 10, ff. 24-25.)

It appointed, as its Executors, Mr. Stickney and *Robert C. Fox*, who, also, was son-in-law to the testator. (Id., p. 9, f. 23.)

With the death of his father-in-law, the financial and business career of Mr. Stickney, commences.

He was, at once, a capitalist, and, speedily, a man of affairs.

He became President, both of the Savings Bank, (Id., p. 64, bot. p. 79, top,) and of the Safe Deposit Company. (Id., p. 66, top.)

Elected Secretary and Treasurer of the Columbian University, (Id., p. 63, f. 147, Id., p. 113, f. 257,) he was placed *upon pay*, as Secretary of the Board of Managers of the Institution for the Deaf and Dumb. (Id., p. 113, f. 257.)

A member of the Legislative Assembly (Id., p. 86, f. 203,) provided for this District, under Act Cong. February 21, 1871, he was subsequently made Secretary of the Government Board of Indian Commissioners. (Id. p. 114, f. 257.)

Money, he loaned in large sums. (Id. pp. 71–72; 79; 95, f. 223.)

With one and the same person, his transactions—though often, indeed, involving the use of the same fund—amounted to from $150,000 to $200,000. (Id., p. 92, f. 216.)

He purchased stock in various corporations, (Id,. pp. 73–74; 81–82,) and invested largely in real estate. (Id., p. 79, ff. 186-187; p. 81, f. 192.)

The distributive share of Mrs. Stickney, in the estate of her father, amounted, as we shall see hereafter, to more than $81,000, in cash, or its equivalent. (Id., p. 112, f. 255.)

To Mr. and Mrs. Stickney had been born an only child, who died in 1880, (Bill, Par. 9, Rec., p. 3; Rec., p. 82, f. 193,) in the 28th year of his age.

The only gift or transfer made by Mrs. Stickney of any portion of her patrimony, had been a gift to this son, of $1,000, on Xmas, 1879. (Id. p. 97, f. 226. Id. p. 69.)

The husband of Mrs. Stickney was an invalid. And she desired, in view of this circumstance, to retain in herself full title to her separate estate. (Id. p. 97, f. 228.)

When money was received, on account of her distributive share in the assets left by her father, she had always requested her husband to invest such money, in her own name. (Id. p. 96, f. 226.)

This request, in respect to the proceeds of the Chicago property, (see entry, Dec. 23, 1879, Id., p. 51) she had made in the presence of a third person, (Id., p. 78, f. 183,) and afterwards in a letter, (Id., pp. 114–115,) intended to emphasize, (Id., p. 95, f. 228) at the same time, her previous requests, in respect to all other monies accruing from her inheritance.

Mr. Stickney had, indeed, made no express promise to comply with such the requests of his wife, (Id., p. 5, top,) though "he would sometimes smile and say that it would be all right." (Id. p. 97, bot.)

And, in the confidence she reposed in him, she had abstained from interrogating him, respecting his obedience to her wishes. (Id. p. 98, top, Ib., f. 229.

During the last ten years of the life of Mr. Stickney, no man could have been more intimate with him, than *Plant*. (Id. p. 79, f. 185.)

To *Plant* he had, at different periods, acknowledged, that his acquisitions of real estate were being made, in part, at least, for Mrs. Stickney, and with her means. (Id. pp. 79–80.)

And when rallied by Plant, upon his increasing riches, he wished it to be understood, that his wealth was not all his own. (Id., p. 80, f. 189.)

Large sums of money had been loaned by Mr. Stickney to *Brown*. (Id., p. 92, f. 216.)

But to Brown he had frequently,—and within 15 months of his death—represented, that the money was that of Mrs. Stickney, and that *the security* must be examined with care. (Id., Ib., pp. 92-93, f. 218; p. 95, f. 223.)

And the accounts of Mr. Stickney were so kept in his stub-books, as to enable the monies of his wife, to be, in general, easily and specifically traced into his possession. (Post, pp. 14-15.)

Mr. Stickney died intestate, (Id., p. 1, f. 2; p. 25, f. 56, p. 67, top,) on October 13, 1881, after an illness which, until a few hours before his dissolution, had occasioned no apprehension either to himself or his family. (Id., p. 63, f. 148; p. 66, ff. 154-155; p. 91, top, f. 215; p. 96, f. 224; p. 114, f. 258.)

Surprised by the crisis which, as from afar, stole upon him unawares,—*longe fallente saggita*,—he was unable to do more than make, as it were, symbolical restitution to his wife, by confiding to her his *keys*, under injunctions to retain them in her possessison, and to examine his papers. (Id. p. 96, f. 225.)

The relations between Mrs. Stickney and her husband had been those of confidence and affection. (Id., p. 70, f. 163.)

In the light of the requests which she had made to him, in his life-time, she had supposed, that her property stood, (Id., p. 96, f. 225) and had been invested, (Id. p. 96, f. 226) in her own name alone.

No suspicion to the contrary, (Id. p. 96, f. 228) had been excited in her breast.

The securities and evidences of value held by Mr. Stickney, had been left in his *box*, at the Safe Deposit Company. (Id. p. 66, f. 155; Id. p. 96, f. 225.)

On the day after the funeral, the contents of this box were examined by Mrs. Stickney and an officer of the Safe Deposit Company, in the presence, as appears, of a third person. (Id. pp. 66-67; pp. 70-71; p. 96, ff. 225-226.)

Nothing there found, stood in the name of Mrs. Stickney. (Id., p. 96, f. 225.)

Everything was in that of her husband. (Id. p. 67, f. 157.)

And beyond what she might be able to obtain or recover, from the estate thus standing in the name of another, property she had none. (Id. p. 97, f. 226; p. 98, f. 230.)

The distress and disappointment with which, at the time, the Appellee was affected by these discovies, were, as described in the evidence, "very painful" to witness. (Id. p. 67, f. 156.)

The sole heirs at law and next of kin of Mr. Stickney, were his *three brothers*, and *the four defendants below*, (two of the latter being infants) *children of his deceased brother*. (Id. p. 1, f. 2; Id. p. 25, f. 56; p. 63, f. 146; p. 84, f. 197.)*

The brothers of Mr. Stickney, under the influence of the discoveries thus made by his widow, immediately relinquished their interests in all the estate left by her husband, by a conveyance formally recognizing her equitable title to that estate. (Ib. p. 12, f. 29.)†

The controversy that might arise over the property of Mr. Stickney, was reduced, therefore, to a controversy between his widow and *the children of the deceased brother of Mr. Stickney.*

To obviate litigation with such near kindred of her buried husband—a measure most uncongenial to her feelings,—it was the proposal of Mrs. Stickney, to fully recognize the rights of the *infant* children

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*Of his surviving brothers, one resided in Maine, (Id. p. 34, f. 82; p. 84, f. 197,) another in Connecticut, (Id. p. 42, f. 98) and the third, continuously, since 1855, at Washington, D. C. (Id. p. 88, f. 208.)

Of the adult children of the deceased brother of Mr. Stickney, one resided in Illinois and the other in Iowa. (Bill, par. 1, Rec. p. 1; Ans. par. 1 Rec. p. 25.)

The infant children of the deceased brother of Mr. Stickney, both resided in Iowa, at the time of the filing of the bill below, (Bill, par. 1, Rec. p. 1; p. 21, f. 49,) but one of them had shortly thereafter, removed to Chicago. (Id. p. 21, f. 49; pp. 23-24.)

†The brothers from Maine and Connecticut, have offered certain ex-

to share in the estate left by her husband, and to make reasonable compensation or recompense to the *adults*,* for their release of claim against the assets. (Id. p. 6, f. 15, Id. pp. 91–92.)

The *bill*—which expressly *waived an answer under oath*,—(Id. p. 7, f. 17,) was filed on March 16, 1882. (Rec. p. 1.)

After subpœnae, returned not found, against the defendants, (Id. pp. 18–19,) orders of publication, under R. S. D. C. sec. 787, (Id. pp. 19–21,) and the assignment of commissioners, to appoint guardians *ad litem* for the infants, and the answers of the same to take, through such guardians, (Id. p. 21, f. 49; p. 22, f. 51; p. 23, f. 53,) after answers, by the adults, in person, (Id. p. 25, top,)—denying the equities of the bill and insisting upon the statute of limitations, —and by the infants, through their guardians *ad litem*, (Id. p. 23, f. 53, p. 24, f. 55,)—after the entry by counsel, of their appearances for the defen-

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planations *of the circumstances* under which they executed this conveyance. (Id. p. 36, f. 85, p. 38, f. 89, p. 43, f. 101, p, 44, f. 103.)

There were two *supplementary* deeds, designed to extinguish the contingent dower interest, if any, of the wives of the brothers, in the realty. (Id. p. 13, f. 33, p. 16, f. 39.)

The latter of these deeds originated in the refusal (Id. p. 38, f. 89,) of the brother who resided in Maine, to reiterate the recital in the original conveyance, (Id. p. 12, f. 30,) that the property left by Mr. Stickney had been acquired with the separate estate of his wife.

*The answer of the adults (Id. p. 28, f. 66) sets up that they were offered "a very trifling sum." But one of them was indebted to the estate of Mr. Stickney for $1,500. (Id. p. 113, top.)

This debt was subsequently reduced to judgment. (Rec. p. 113, top.)

dants, (Id. p. 22, top; p. 29, f. 68),—by consent of counsel for the adult defendants and for the guardians *ad litem* of the infant defendants,— the cause, on October 6, 1882, on motion of the complainant, was referred to the Auditor of the Court below, to ascertain and report upon and with the evidence to be produced before him,—amongst other things,—whether the complainant was a creditor upon, or entitled to repayment out of, the estate of her husband, and if so, in what amount,—liberty being given to the Auditor, to state, also, any special matter or circumstances.* (Id. pp. 29–30.

From the monies, inclusive of the distributive share of Mrs. Stickney, in the estate of her father, which came into the hands of Mr. Stickney, after the death of Mr. Kendall, Mr. Stickney, under a prudent administration of such his resources, must have received an average annual net income of not less than $9000, and should have left, at his death, an estate of the value of $175,000, at least. (See App'x. B, post, pp. 64–67.)

The estimate actually placed upon that estate, by the answers of the adult defendants, was in excess of $150,000. (Id. p. 25, f. 57; p. 26, par 8th.)

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*From the proceedings had under this reference, the facts of the case are, almost exclusively, developed.

And the brothers of Mr. Stickney, residing in New England, seem to have supposed, that a considerable portion of that estate would remain, after deducting from the value of the whole, as much as $100,000 to be paid to his widow. (Id. p. 38, f. 89; p. 43, f. 101.)

But while represented as a gentleman of good, (Id. p. 71, f. 166.) or fair, (Id. p. 81, f. 191,) business capacity, and as devoting to his "family expenses," but about $3,000, per annum, (Id. p. 82, f. 193,) Mr. Stickney appears to have been easily influenced in his judgment, and indifferent to the increase of his capital. (Id. p. 71, ff. 166–167.)

And the net value of his entire estate, at the time of his death, was but $85,752.08. (App'x. B. post p. 67.)

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In distributing the estate of Mr. Kendall, his executors—taking the receipts of his daughters—paid over unto *themselves*, the shares of their own wives, and handed the portions of the remaining distributees, directly to their husbands.

(Rec. p. 53, f. 125; p. 63, f. 148; p. 98, f. 229.)

*This*, as to the distributive share *of Mrs. Stickney*, was expressly found by the Auditor. (Id. p. 46, f. 107.)

And, to this finding, no exception has been interposed. (Id. pp. 99–101.)

A sample, as well of the *receipts* executed by Mrs. Stickney to the Executors, as of the *checks* used by the Executors, in dealing with her distributive share in the estate of her father, will be found in the record, at p. 113. (*Complainant's Exhibits* Nos. 5 and 6.)

*The books kept by the Executors* of Mr. Kendall, were produced by the complainant below, and were examined by the Auditor and by counsel. (Id. p. 54, f. 126.)

She also put in evidence the various *Accounts*, (Id. pp. 62–63 f. 146; pp. 107–112) *filed by those Executors* in the probate branch of the court below, and there, after examination, approved and passed.

These, with but a single exception, had been presented by—and verified by the oath of—Mr. Stickney. (Id. p.107, bot.)

The personal *bank-books of Mr. Stickney*, were also produced by the complainant below, and were examined by the Auditor and by counsel. (Id. p. 54, f. 126.)

The individual accounts of Mr. Stickney, had been kept, mainly, in his *check-stub books*.

(Id. p. 70, f. 165; p. 72, f. 169; p. 74, f. 174.)

And the entries in these accounts, had, in general, explained, with some particularity, the transactions to which these entries related. (Id. Ib., p. 69, f. 161; pp. 86–87, ff. 204–205; pp. 92–95.)

These *check-stub books* were also produced by the complainant below, and were examined by the Auditor and counsel. (Id., p. 54, f. 126.)

The *books kept by the Executors* of Mr. Kendall, and the personal *bank-book* and *check-stub books of Mr. Stickney* "*contain the entries*," (Id. p. 54, f. 126) and are admitted to supply "*the amounts and figures*," (Id. p. 62, f. 145) read in evidence (Id. pp. 54–62) before the Auditor.

The entries in these *check-stub books*, though, apparently, the result of chance, might almost be felt, in view of their influence upon the controversy, to have been made under providential guidance, *forte quadam divinitus*.

By means of the *books kept by the Executors* of Mr. Kendall, and of the entries in the personal *bank-books* and *check-stub books* of Mr. Stickney, $79,971.-13,* of the distributive share of Mrs. Stickney, in the estate of her father, was specifically traced by the Auditor, into the deposit account of her husband. (Id., p. 46, ff. 107–108; p. 52, f. 120.)

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*A small portion of this sum, cannot be so specifically traced, in the Record, as printed.

Under date of Jan. 16, 1871, (Id., p. 54, f. 127) appears an item of $215 50, which, in the 8th item from bot of p. 51, p. 112, top, the Auditor seems to have allowed, only upon the general tendency and strength of the evidence.

*Five* items, occurring between Nov. 3, 1873 and July 3, 1874, and *one*, ($484.41,) under date of Nov. 11, 1874,—amounting, in all, to $1,623.20, (Id., p. 56, ff. 130–131,) are also allowed by the Auditor. (Id,, p. 52, commencing with 7th item from bot.)

But, after the suspension, in September, 1873, of Jay Cooke & Co., with whom he had theretofore dealt, Mr. Stickney had kept his money

The method pursued, without objection, at the time, in tracing into the deposit account of Mr. Stickney, the moneys by him received for the distributive share of his wife, in the estate of her father, and in stating the contents of the entries of the books of the Executors and the personal bank-books and check-stub books of Mr. Stickney, appears at large in the Record. (Id. pp. 54–62.)

An analysis of these entries shows, that, in general, Mr. Stickney deposited to his personal credit merely the share of his own wife, (*plus commissions*,) in any money to be distributed by the Executors to the daughters of Mr. Kendall, but that, *in fourteen instances*, he deposited to his own credit the whole of such money, and checked out, (*less commissions*), only the shares therein *of the sisters* of Mrs. Stickney.

By means of the bank-books and stub-check books of Mr. Stickney, it was also ascertained by the Auditor, that the only payments which had been made by

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*in the safe*, at the Safe Deposit Company, and had neither bank-book nor bank account, until July 13, 1874, when he became a depositor with Riggs & Co. (Id., p. 56, f. 130; p. 57, top; pp. 68–69.)

*Ten* items, occurring between October 3, 1878 and December 8, 1879, (commencing at p. 51 bot. and continuing on p. 52, top,) and amounting, in all, to $596 37, have been allowed by the Auditor, though not *by the personal bank books* and *check-stub books* of Mr. Stickney, specifically traced into his possession.

But the evidence is complete, that after the latter part of 1878, the distributive share of Mrs. Stickney, in the estate of her father, was paid directly to her husband, by Mr. *Fox*, his co Executor. (Id., pp. 63–64; p. 53, f. 125.)

No exception, however, has been taken to any of the items thus allowed by the Auditor.

Mr. Stickney, unto, or at the request of, his wife, of any portion of her distributive share in the estate of her father, were, on January 3, 1877, a payment of $600, in eleven checks, one of $100 and ten of $50, each, (p. 52, f. 127; p. 58, second item from bot.) and, on December 23, 1879, (Id. p. 52, f. 127; p. 69, ff. 161–162; See, also, p. 97, ff. 226–227, p. 114, bot.) a payment at her request, of $1,000, by way of Xmas gift, to their son *Will*, (their only child,) who died during the next year. (Id. p. 82, f. 193.)

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Upon the moneys received by Mr. Stickney from the separate estate of his wife, *interest* had been claimed, neither in the bill, (Id. p. 7, f. 17, prayer 3,) nor before the Auditor. (Id. p. 48, bot.)

And the unpaid balance of the moneys shown to have been thus received by Mr. Stickney, (Id. p. 46, f. 107) was, as ascertained and reported,—without exception,—by the Auditor, the sum of $78,371.13.* (Id. p. 52, f. 121.)

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The balance for distribution *in the personalty*, together with the value of *the real estate*, left by Mr. Stickney, represented, in the aggregate, as found by the Auditor,—to whose report, in these particulars, no exception was taken—(Id. pp. 99-101,) a sum but

*This was $1,370.41 less than what would remain of the distributive share ($81,341.54) of Mrs. Stickney, in the estate of her father, after deducting from such share, the credit of $1,600, (Rec. p. 54,) allowed by the Auditor, in favor of the husband.

slightly in excess of the net balance ($78,371.13) of that portion of the distributive share of Mrs. Stickney, in the estate of her father, which had been traced, as already explained, into the personal deposit account of her husband.

Applying to such net balance, the whole distributable personalty, (Id., p. 50, top; p. 52, bot.) and the value,—less ⅓, for *dower*, commuted,—(Id. p. 50, f. 117,) of the entire real estate, left by Mr. Stickney, it was found by the Auditor—to whose report, in these features, also, no exception was interposed—that but $687.20 would remain,—a sum which would be exhausted, it was said, by the expenses incident to a sale of the realty, but of which, in the absence of such sale, the defendants, collectively, could receive no more than ¼, or $171.80. (Id. p. 49, bot.; p. 50, ff. 117-118.)

The Report of the Auditor,—an able and careful statement both of the facts and of the law applicable thereto,—had been returned into Court, on April 24, 1883. (Id. p. 45, f. 105.)

To this Report, *exceptions* were filed by the defendants below, on May 23, 1883. (Id. p. 99, f. 233.)

Before noticing these exceptions, it becomes necessary, however, to refer to certain objections, taken by the defendants below, *to particular testimony given by the complainant*, since, upon these objections, and

the testimony to which they relate, the exceptions to the report of the Auditor, are, or are intended to be, in large degree founded.

In the course of the proceedings before the Auditor, Mrs. Stickney three times appeared as a witness, in her own behalf.

No general objection to her competency, was, at any time, interposed by the defendants below.

And her testimony, on her first appearance, was concluded without objection of any kind. (Id. p. 56, f. 130.)

To *two particular inquiries* made of this lady, upon her second examination, the defendants, indeed, objected.

She was asked, in effect, by her counsel, whether, otherwise than through her husband, she knew how the property upon which he resided, at the time of his decease, had been acquired, or when paid for.

And she replied in the negative. (Id. p. 65, f. 153.)

She was asked, in like manner, what, if any means, had been given her by her father, in his lifetime.

And, under objection, she stated, (what is fully established by other evidence—Id. p. 57, f. 132; p. 63, f. 148,) that to herself, as to his other children, he had given $10,000, in telegraph stock, (Id. p. 65, f. 153.)

At her last attendance, (Id. p. 95, f. 223, *by error*, *Mr.* for *Mrs.*,) Mrs. Stickney was cross-examined, at length, by opposing counsel.

The testimony which he thus elicited, was, in important particulars, more positive and circumstantial, (Id. pp. 97–98), perhaps, than that which had been called forth by her examination in chief.

To *two* only of the inquiries propounded, on this occasion, to the complainant, by her counsel, did the defendants below object.

These inquiries related exclusively to the apprehensions entertained by Mr. Stickney, and his friends, as to his condition, during his last illness, and to the period, in the progress of his disease, at which any change in his condition, occurred. (Id. p. 96, f. 224.)

The answers made by Mrs. Stickney to these questions, merely corroborated the testimony of previous witnesses (Id. p. 63, f. 148; p. 66, ff. 154–155; p. 91, top,) and the certificate, already admitted, *by consent*, (Id. p. 91, f. 215,) of the attending physician of her husband. (Id. p. 114, f. 258.)

*The only opposition manifested below, to the testimony of Mrs. Stickney, is expressed in the four objections above.*

To the letter of Dec'r 23, 1879, (Id. p. 114, bot.,) when offered in evidence by the complainant, the defendants, indeed, also objected. (Id. p. 97, f. 227.)

But the genuineness of the writing, and the source from which she obtained it, had been previously, and without objection, established by her testimony. (Id. p. 97, f. 227.)

The *requests* contained in the writing, had not only been already proven, without objection, by her own evidence, (Id. pp. 96–97, f. 226,) but, in certain particulars, by the testimony of other witnesses. (Id. p. 69, ff. 161–162; Id. p. 78.)

And her subsequent cross-examination upon the paper, was full and complete. (Id. pp. 97–98.)

The exceptions,—seven in number—to the report of the Auditor, (Id. pp. 99–101) do not particularize the moneys in Schedule A, (Id. pp. 50–52,) which are conceded to have been deposited by Mr. Stickney to his personal credit, though received by him as part of the separate estate of his wife.

Nor do the exceptions point out the items, if any, in that schedule, which it is supposed that the evidence fails to identify as part of the distributive share of Mrs. Stickney in the estate of her father.

The exceptions raise other questions, and resist the report upon other grounds.

The 1st., (Id. p. 99, f. 233,) 4th, (Id. p. 100, f. 237,) and last (Id. p. 101, f. 237,) of the exceptions, suppose, in effect, that, in concluding that any part of

the distributive share of the complainant below, in the estate of her father, was invested by Mr. Stickney, in his own name, *without the knowledge of his wife, and contrary to such express directions as she is shown to have given*, the Auditor has not only reversed the natural presumption which arises in the premises, but has relied, exclusively, upon the incompetent evidence of the complainant, "to whose testimony the defendants objected at the time." (Id. p. 99, f. 234.)

The 3rd exception (Id. p. 100, ff. 236-237,) emphasises the preceding supposition, by insisting, (with reference to a different portion of the Report,) that the natural and general presumption in favor of the assent of the complainant to any investments made by the husband, of her separate estate, in his own name, must be strengthened by the circumstance, that, *in respect to the proceeds of the Chicago property, is to be found the single instance in which such her assent appears to have been withheld.*

The 2d exception, (Id. p. 100, top,) concedes, in effect, that the bank-books of Mr. Stickney have revealed deposits of money to his personal credit, under circumstances "*from which it might fairly be presumed that it was the same money*" which came into his hands from the distributive share of his wife, in the estate of her father; but,—the exception insists,—"*neither the bank-books, nor any other evidence*"—the incompetent testimony of the wife, excluded—*show either that such deposits were not made with her*

*knowledge and approval, or,* (as reiterated in the 6th exception, Id., p. 101, f. 237,) *that the husband did not fully account to her therefor.*

The 5th exception (Id. pp. 100–101) supposes, that, *in order to render the complainant a creditor upon his estate, a promise of repayment, on the part of the husband, must be established by proof.*

*The presumption of a gift from the complainant to her husband, of the entire corpus of her separate estate,* is not suggested in the exceptions.

Reduced to their simplest forms, and relieved of their errors in respect to the objections actually taken to the testimony of Mrs. Stickney,—the exceptions rely upon the following *legal propositions:*

1. The presumption of the assent of the wife, to the *investments made by the husband* of her separate estate, *in his own name.*

2. The absence of proof, *on the part of the complainant,* that the husband *failed to account to her,* in his lifetime, for the moneys received by him from her distributive share in the estate of her father.

3. *The absence of proof of an express promise by the husband to repay to the complainant, the moneys so by him received.*

On October 12, 1883, (Id. p. 101, f. 238,) by a decree of the Special Term, in the court below, these

exceptions were overruled, the Report of the Auditor was confirmed, and, in default of sufficient personalty, to satisfy the debt found to be due Mrs. Stickney, a sale was directed of the realty.

On April 10, 1884, this decree, on appeal, was affirmed in the General Term of the court below, and an appeal from such decree of affirmance allowed to *this* court. (Id. p. 103, f. 242,)

The appeal thus allowed to this court, not having been duly perfected, the present appeal was prayed and allowed, on February 25, 1886. (Id. p. 104, top.)

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Such is the case that the court is desired to review, —such the decree it is asked to reverse.

## Points and Authorities.

I. *As to the Exceptions to the Report of the Auditor.*

1. *The correctness of the items in Schedule A is not called in question by the Exceptions.*

In 53 items, the Auditor has traced into the personal deposit account of Mr. Stickney, $79,971.13, of the distributive share of the Appellee, in the estate of her father.

(Rec. p. 46, ff. 107–108; Schedule A, pp. 50–52; Ante, p. 15.)

If this feature of the Report were now open to re-examination, it would be impossible to disturb it.

For,—not to mention that the findings of the master are, *prima facie*, correct,—

Medsker *v.* Bonebrake, 108 U. S. 72;

Tilghman *v.* Proctor, 125 Id. 149–150,—

These items are established by evidence at once conclusive, and remarkable in its origin.

(Rec. p. 48, f. 114; Id. pp. 54–62; Id. pp. 108–111, Ante, pp. 15–16.)

But it is admitted, by the exceptants, that the money represented by *some* of these items, was traced by the Auditor into the possession of Mr. Stickney, under circumstances "from which it might fairly be presumed that it was the same money" which came into the hands of the husband, from the separate estate of his wife. (Id. p. 100, f. 235; Ante, p. 22.)

And the exceptions point out *no* item which it is supposed that the evidence fails, in any degree, to identify as part of the same estate. (Ante, p. 21.)

The correctness of the items contained in *Schedule A*,(Rec. pp. 50–52,) is not, therefore, called in question, by the exceptions.

This court cannot be expected to supply objections to the Schedule, or to search for error in its items.

And upon this feature of the Report, the appellants stand concluded by the findings of the Auditor.

Harding *v.* Handy, 11 Wheat. 126;
Story *v.* Livingston, 13 Pet. 366 ;
Ransom *v.* Davis' Adm'r. 18 How. 297 ;
McMicken *v.* Perin, Id. 510 ;
Hudgins et al. *v.* Kemp, 20 Id. 53 ;
The Ship Potomac, 2 Black, 584 ;
Medsker *v.* Bonebrake, 108 U. S. 72.

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The findings of the Auditor, that Mrs. Stickney did not acquiesce in, (Rec. p. 46, f. 109,) nor, until after the death of her husband, discover, (Id. p. 49, f. 114) the investments made by him, in his own name, of her separate estate, and that the unpaid balance of her moneys so invested by her husband, amounted to $78,371.13, (Id. p. 49, f. 115; p. 50, top; p. 52, f. 121,) are, indeed, opposed by exceptions which insist that these findings are based upon no other evidence than the incompetent testimony of Mrs. Stickney, delivered in the face of timely objections from the exceptants. (Id. pp. 99–101, Ante, pp. 21-22.)

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2. *Objections to particular questions propounded to the complainant, do not call in question the competency or value of her testimony at large.*

The objections taken to the testimony of Mrs. Stickney relate to but *four* particular questions. (Rec. p. 65, f. 153; p. 96, f. 224,) and such of her answers to those inquiries, as may be deemed in anywise adverse to the interests of the defendants below, have become, in view of other evidence in the Record, obviously immaterial. (Ante, pp. 19-20.)

If the testimony of Mrs. Stickney was properly open to objection, it cannot be doubted, that it might still have been received and considered, *in the absence of objection.*

Hume v. Beale's Exr., 17 Wall. 349-350.

And the objections which were actually taken to her testimony, must be understood to imply, that they were intended to be exceptional and exclusive.

Belk v. Meagher, 104 U. S. 289.

An answer, *under oath*, was expressly waived in the bill. (Rec. p. 7, f. 17, Ante, p. 11.)

The testimony of the complainant, in the absence of objection, was as competent and sufficient as that of any other witness, to sustain the averments of the bill.

And any presumption *of knowledge and acquiescence*, on the part of the wife, must yield, like every

disputable presumption, to the weight of positive testimony

3. *To rebut any presumption of the beneficial transfer of her separate estate to her husband, it is not necessary to rely upon the testimony of Mrs. Stickney.*

It is found by the Auditor, that it was never the intention of *Mr.* Stickney, to treat as his own, the money belonging to the separate estate of his wife, but that the husband considered, and, in effect, proclaimed, himself, *her trustee.* (Rec. pp. 46-47.)

To this finding, no specific objection appears to have been taken. (Id. pp. 99–101.)

Nor could any have been interposed, without doing violence to the evidence. (Ante, pp. 7-8.)

Loans of money admitted by Mr. Stickney to be that of his wife, continued to be made down to within less than 15 months of his decease. (Rec. p. 95, ff. 223.)

The requests contained in the letter addressed by Mrs. Stickney to her husband, on December 23, 1879, (Id. p. 97, f. 227; pp, 114–115,) are confirmed, in certain particulars, by the entry made by the latter, in his check-stub book, (Id. p. 69, f. 161,) and by the recollections both of Mr. *Snyder* (Id. p. 69, ff. 161–162,) and of Mrs. *Jones.* (Id. p. 78, ff. 182–183.)

Were it shown, however, that the husband had been expressly empowered by the wife, *to manage and invest* her distributive share in the estate of her father, this circumstance, though it might establish the relation *of principal and agent*, between the parties, could raise, in itself—the exceptions contended for—no presumption of *a gift* from the wife. (Ante, p. 23.)

4. *As to the absence of proof of an express promise of repayment.* (Id. pp. 100–101.)

It can scarcely be necessary to urge, that if the obligations of natural justice *implied the assumpsit* of Mr. Stickney to account for the moneys of his wife, his action, in fact, in the premises, becomes immaterial.

5. *As to the supposed absence of evidence that the moneys remain unpaid.*

The only credits in favor of Mr. Stickney, that appear to have been disclosed by his personal check-stub books, in which mainly his accounts were kept,—(Ante, p. 14,)were derived from his payment of $600 to his wife, (Rec. p. 58, second item from bot; Id. p. 52, f. 121,) and his gift, at her request, of $1,000 to their son. (Id. p. 69, f. 161; p. 52, f. 121; Ante, p. 17.)

The personal bank-books and check-stub books of Mr. Stickney, were produced by the complainant below, and were examined by "*the Auditor and counsel.*" (Id. p. 54, f. 126; Ante, pp. 14-15.)

These books were evidence of the highest character.

Lehmann *v.* Rothbarth, 111 Ill. 200-201.

And had they contained items, or evidence, of *other payments* to or on behalf of Mrs. Stickney, it is scarcely possible to suppose, that such items, or evidence, would have been wholly overlooked, in the course of the proceedings before the Auditor.

Between the month of January, 1870 (Id. p. 50, f. 118; Id. p. 54, ff. 125-126; Id. p. 107, f. 248,) and the ~~8th~~ 23d day of December, 1879, (Id. p. 52, f. 120,) both inclusive, Mr. Stickney was continuously in receipt of moneys derived from the separate estate of his wife.

His death occurred on October 13, 1881. (Ante, p. 8.)

And the bill was filed on March 16, 1882. (Rec., p. 1.)

No presumption of payment can arise, therefore, from the lapse of time, or from any *laches*, on the part of the widow. (Post., pp. 55-58.)

And, from the circumstance that a debt *has existed*, to imply, as the exceptions seem to assert, (Id. p. 100, f. 236; 6th Excep. p. 101,) the conse-

quence that the debt *has also been paid*, must introduce a new principle in the law of presumptions.

Manning *v.* Insurance Co. 100 U. S. 697;
Best, Presump. § 137, p. 187;
2 Greenl. Ev , § 516.

To presume not only knowledge and acquiescence, on the part of the wife, but payment and satisfaction, on the part of the husband, and to establish, at the same time, the incompetency of the wife, as a witness, must render such presumptions, in general, *indisputable*, by silencing the only testimony that can commonly be expected to rebut or disprove them.

II. *As to the case, at large.*

If we pass from the particular questions involved in the exceptions, to a more general consideration of the rights of the parties, the principles which support the decree below, will be found to broaden with the field of inquiry.

That the executors, of whom Mr. Stickney was one, named in the will of Mr. Kendall, obtained the receipts of the appellee for her share in the estate of her father, and that they became thereby relieved

from liability to the appellee, in their characters *as executors*, must be perceived and admitted.

But it ought not to be disputed, upon the evidence, that this share was paid by the executors directly to Mr. Stickney, and that no portion of it was delivered by them to his wife. (Ante, p. 13.)

And the same transaction which discharged the husband, in his quality of *co-executor*, must, in the absence of agreement between himself and his wife, have invested him with a fresh fiduciary relation, and clothed him with new responsibility.

To borrow the observation of Lord *Eldon*, "he would be precisely in the same situation, as to the beneficial interest, as the persons who made the transfer."

Rich v. Cockell, 9 Ves. 375.

Where the wife has no other trustee, her husband becomes such, by operation of law.

Hutchins et al. v. Dixon, et al., 11 Md., 29;
Gover v. Owings, 16 Id. 99.

And when he obtains possession of her separate estate, whether *in invitum*, or through her consent, he holds it, upon general principles of equity, in trust for her benefit.

Wales v. Newbold, 9 Mich. 65–66;
Bergey's Appeal, 60 Pa. St. 416;
2 Story Eq. Jur. § 1380;
Jones v. Clifton, 101 U. S. 229.

And the circumstance that her means have been mingled with moneys of his own, cannot affect, as between themselves, the obligations of the trust.

National Bank v. Insurance Co. 104 U. S. 54–70.

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The abstract correctness of these principles, will not, perhaps, be denied.

And the consequences which attend them, in general, must be held to follow in the present controversy, in the absence of proof that the separate estate of the appellee, was beneficially acquired by her husband, in his lifetime, by means sufficient, in law and in fact, for its transfer.

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By Act of Cong., April 10, 1869, sec. 1, (16 Stat. 45,) now sec. 727, R. S. D. C., the title of the appellee to her separate estate, was rendered "as absolute as if she were feme sole," and her estate placed, in express terms, beyond "*the disposal of her husband.*"

See, Hitz v. Nat. Met. Bank, 111 U. S. 729.
Mattoon v. McGrew, 112 Id. 713.

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"After it has been shown, as it was in this case," observes *Strong*, J., "that the property accrued to the wife, by descent from her father's and brother's estate, the presumption necessarily is, *that it continues hers.* In such a case, it lies upon one who asserts it to be the property of the husband, to prove a transmission of the title, *either by gift, or contract for value.* The law does not transmit it, without the act of the parties."

Graybill v. Moyer et al. 45 Pa. St. 534.
See, also, Bergey's Appeal, 60 Id. 408 (cited by Auditor, Rec. p. 47, ff. 110–111.)
Bishop et ux. v. State &c. 83 Ind. 74–75.

"The husband cannot acquire the property *of his wife*, except by gift or purchase, any more than he can that of a *feme sole*."

White *v.* Zane, 10 Mich. 335.
Bergey's Appeal, 60 Pa. St. 416.

It is not pretended, that Mr. Stickney became *the purchaser* of any portion of the distributive share of his wife, in the estate of her father.

And the acquisition, if any, of that share, by her husband, must be rested upon its free and voluntary transfer from the wife, by means of a complete and perfect *gift*, combining the renunciation both of her *title* and possession, and operating as *an executed contract, founded upon the mutual consent and concurrent wills of the parties thereto.*

(2 Kent's Com. 438.)

This mutuality of consent and concurrence of wills, are to be deduced, if at all, from transactions in which the intestate of the appellants, appears *in two distinct fiduciary relations.*

The relation of an *executor* towards a *legatee*,
1 Story Eq. Jur. §218.

And the relation of a *husband* towards his *wife*.
Id., Ib.
Boyd De La Montaguie, 73 N. Y. 498;
Darlington's Appeal, 86 Pa. St. 512;
Smylie *v.* Reese, 53 Ala. 101;
McRea *v.* Battle, 69 N. C. 106–107.

The distributive share of Mrs. Stickney, in the estate of her father, represented the sum of her possessions.

The *executor*, upon formal receipts from the *legatee*, passes the entire proceeds of her legacy to his own personal credit.

And that this transaction may be sustained, it must be asked, in effect, that *a gift* of those proceeds may be presumed from *a wife* to *her husband*.

The confidence, affection, or sense of duty so readily established in all fiduciary relations, requires the transactions between persons occupying such relations, to be viewed under principles essentially different from those which prevail in ordinary cases.

And, by a general rule of equity, the burden of sustaining such transactions, is imposed upon the fiduciary.

1 Story Eq. Jur. § 312.

In particular, gifts from the wife to her husband, are examined by courts of chancery "with an anxious watchfulness and caution and dread of undue influence."

2 Story Eq. Jur. § 1395;
Boyd *v.* De La Montaguie, and other cases, *supra*, p. ;
Farmer's Ex'or *v.* Farmer, 39 N. J. Eq. 215;
Comstock's Appeal, &c., 55 Conn. 222.

And "are never to be inferred, without clear evidence."

1 Dan. Ch. Pr., 100, (5th Am. ed.)
Wells Sep. Est. Mar. Wom. § 388.

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It is not necessary to consider the equities which might arise, were the present controversy between the complainant below and creditors of her husband, who might justly be presumed to have relied upon his

ostensible resources and apparent title to the estate which he managed in his own name.

The appellants are volunteers.

They claim upon no consideration, but by operation of law, alone.

And their equity, it is obvious, is that only of the person from whom they inherit.

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Nor did the complainant below seek to recover, (Ante, p. 17,) any portion of *the profits* or *income* of her separate estate, the use of which, *de anno in annum*, might be supposed, were there no evidence to the contrary, (Ante, p. 13,) to have been applied to their common support, or to have encouraged the husband to extend his business ventures, or increase the expenses of his establishment.

Lyon v. Green Bay & Minn. R. R. Co. 42 Wisc. 553;
Stennett v. Bradley et al. 70 Id. 280;
Reeder et al. v. Flinn, 6 Rich. (So. Car.) 216;
Allen v. Allen, 80 Ala. 180;
Lower v. Lower, 46 Iowa 527;
Schouler Husb. & Wife, §§ 254, 284;

The equity which she asserted below,—her claim upon the present appeal,—relates only to the *corpus* or *capital* of her property.

*Nemo donare facile presumitur*, is, indeed, said to have become a maxim in the law.

Grey *v.* Grey, 47 N. Y. 555.

But the presumption may be indulged with less difficulty where there exists some legal or moral obligation on the part of the supposed donor, as in the case of a father or husband, than where no such obligation is made to appear.

Jackson *v.* Jackson, 91 U. S. 125.

The presumption of a gift may arise as to one description of property, from circumstances which could raise no such presumption as to another.

Whiton et al. *v.* Snyder, 88 N. Y. 299.

And gifts *of capital* must be much less readily inferred than donations of *income* or *profits*.

Schouler Husb. & Wife, § 281.

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The only circumstances, if any, which can be urged, with any degree of plausibility, in support of an actual *gift* by Mrs. Stickney of the whole of her separate estate to her husband, must be found in his possession and use of that estate, and in the length of the period for which such possession and use were continued.

But these circumstances must be viewed in connection with the relations of confidence and affection, that are admitted (Rec. p. 70, top,) to have existed between the parties.

"All know and feel," says *Marshall*, C. J., "the sacredness of the connection between husband and wife. All know that the sweetness of social intercourse, the harmony of society and the happiness of families, depend on that mutual partiality which they feel, or that delicate forbearance which they manifest, towards each other."

Sexton *v.* Wheaton, 8 Wheat., 239.

"When he commands, she obeys; when he persuades, she yields; when he gently hints a wish, she grants." Darlington's Appeal, 86 Pa. St. 519.

Yet, in effect, on the present appeal, "we are asked to deal with the conduct of a wife living in harmony with her husband, as if she was a third person."

Bank U. S. *v.* Lee, 13 Peters, 118.

In order to preserve her rights in her separate estate, was it incumbent, in law, upon the appellee, "to advertise the community in which she lived, that her husband had no title to the property?"

Bank U. S. *v.* Lee, 13 Pet. 118.

It is shown by her own testimony (Ante, p. 7,) that the Appellee had actually represented to her husband, her desire that he should invest, in her own name, all of the money derived from her share in the estate of her father.

And her like representation, in respect to a particular portion of that money, is established by other evidence. (Id. Ib.)

Was it the duty of the wife to see that such her requests, were actually respected by her husband?

Must she force him to disclosure, by examination, or fatigue him to obedience, by expostulation or entreaty?

And was she compelled to proceed against him, *by suit*, if he failed to furnish her the evidence of his compliance with her wishes?

"No man will say so. Confiding, as it was natural and amiable in her to confide," in her husband, "it was natural for her to suppose that his conduct would be influenced by her representations."

Sexton *v.* Wheaton, 8 Wheat. 239–240;
See Trust Co. *v.* Sedgwick, 97 U. S. 308.

The money was her own.

"She was not bound to rescue it from her husband, or proclaim that it was not a gift, but might properly suppose that he took it to keep for her."

Bergey's Appeal, 60 Pa. St. 415;
Well's Sep. Est. Mar. Wom. § 389.

"Neither good law, nor sound reason, will require the wife to destroy the peace of her family and en-

danger the marriage relation, by open repudiation or hostile conduct towards her husband."

McLaren *v.* Hall, 26 Iowa, 305;
Rogers *v.* Bank of Pike Co., 69 Missouri, 564–565.

The confidence of the appellee that her estate had been duly invested in her own name, was unbroken, in the lifetime of her husband, and surrendered, after his death, only when belief ceased to be possible. (Ante, p. 9.)

The use and possession *by the wife* of property which belongs to her husband, create, of themselves, no presumption of his gift of the property.

McDermott's Appeal, 106 Pa. St., 367–368.

Nor should the use, possession and management *by the husband* of the separate estate of the wife, raise, *inter sese*, the presumption of a gift.

Well's Sep. Est. Mar. Wom. §§ 45, 256, 388.
White *v.* Zane, 10 Mich. 335;
Graybill *v.* Moyer et al., 45, Pa. St. 534;
Lower *v.* Lower, 46 Iowa 527;
Vreeland *v.* Adm'r, 16 New J. Eq. 223;
Bongad *v.* Cox, 82 Ill. 20–21.

By *statute*, the title of the wife remains unimpaired by such circumstances, in *Missouri*, in the absence

of her *consent in writing*, that the husband may sell, encumber, or otherwise dispose of her property, for his personal benefit.

Rogers *v.* Bank of Pike Co. 69 Mo., 564;
Broughton *v.* Brand, 94 Id. 174.

Nor do they, of necessity, *elsewhere* subject her estate to the claims of his creditors.

Voorhees *v.* Bonesteel, 16 Wall. 31;
Aldridge *v.* Muirhead, 101 U. S. 399;
Fresh *v.* Wirtz, 34 New J. Eq. 129–130;
Holcombe *v.* People's Sav. B'k, 92 Pa. St. 344;
Weaver *v.* Roth, 105 Id. 408;
Wheeler *v.* Raymond, 130 Mass. 249.

In *Iowa*, the statutory provisions which once rendered the estate of the wife thus liable, are no longer in force.

Schmidt *v.* Holtz, 44 Iowa 446.

And there is there no estoppel *in pais*, against her.

Bennet et al. *v.* Strait et al., 63 Id. 62.

Had *a stranger* been employed by the appellee to obtain, (on her receipts to the Executors) and, to manage and invest, her distributive share in the estate of her father, no one would perceive, in this arrangement, more than an ordinary business connec-

tion between the parties, creating, in law, the relation of principal and agent.

And may not the wife have recourse to the services of *her husband*, as well as to those of another to whom she is less bound by ties of confidence and affection?

The husband, as between the wife and himself, is, in general, the more suitable and competent to manage her estate.

And as men of business not infrequently enter into pecuniary transactions with married women, with more or less reluctance, considerable convenience is often attained, by entrusting to the husband the possession and control of the separate estate of his wife.

And it was, no doubt, from considerations of this nature, that Mr. Stickney felt justified, notwithstanding the requests of the Appellee, in managing and investing her moneys, in his own name.

"Admitting that the funds of the wife may lawfully be entrusted by her to a third person for investment, why should she be compelled to have recourse to such agency? Or why should the mere fact that they are entrusted to the management and control of her husband be evidence of the renunciation of her rights or of the transfer of the property? It would seem that there is no one to whom the care of the wife's property can more naturally and with more propriety be entrusted than the husband. And if, while

they are living together, he is permitted to take the interest or profits of the estate, for their mutual benefit, or for his own use, it should, as between the husband and wife, raise no presumption prejudicial to her rights."

Vreeland *v.* Adm'r 16, New J. Eq. 624-625;
See, also, Bongard *v.* Cove, 82 Ill. 20-21.

The exercise by the husband of acts of apparent ownership over property belonging to his wife, is scarcely to be avoided, where the marital relation is that of mutual confidence and esteem.

2 Bish. Mar. Wom. 132.

"Living under the same roof with the wife, the head of the family, and as solicitous for the material prosperity of his wife, as for his own, it would be unavoidable that he should exercise the same care and control over her property as he would over his own, and in the eyes of the world have the same freedom in its use."

"Such use must necessarily follow from the relation of husband and wife, if such trust and confidence exists between the parties as should exist, and as the law supposes to be implied in that relation."

Dean v. Bailey, 50 Ill. 484;
Plummer v. Claybaugh, 78 Id. 94;
Blood v. Barnes, 79 Id. 438-439.

It must be conceded, however, that decisions are to be found in several of the States, which indulge a presumption, or recognize a title, in favor of the husband, from his use and appropriation, *with her consent*, of the separate estate of the wife.

Thus, in *Maryland*, while it is conceded that the relation of debtor and creditor may arise between husband and wife, where he receives her money, or other property, "upon a special trust or confidence that it shall be invested for her benefit,"

State *v.* Reigart, 1 Gill 28,—

And that, "like any other trustee, he and his representatives are responsible to her separate estate, for whatever funds he may receive belonging to it,"

Gover *v.* Owings, 16 Md. 99,—

It is yet held, that the obligations of the husband, "*where the receipt and appropriation are made with the wife's knowledge and acquiescence*, are always founded on an agreement by the husband to repay the money or property so appropriated."

Edelin *v.* Edelin, 11 Md. 420;
Kuhn *v.* Stansfield, 29 Id. 215;
Hill *v.* Hill, 35 Id. 185;
Tyson *v.* Tyson, 54 Id. 38;
Jenkins *v.* Middleton, 68 Id. 540.

Such, also, seems to be the law of *South Carolina*.

Reeder et al. *v.* Flinn, 6 Rich. 216; per MOSES, C. J.;
McLure *v.* Lancaster, 24 So. Car. 281-282.

In *North Carolina*, before the Constitution of 1868, the proceeds of the sale of lands, as well as the moneys, in general, of the wife, *were absolutely the property of her husband.* And, it followed, of necessity, that, in the absence of agreement, he could not be compelled to account to her for such proceeds or moneys.

Hackett *v.* Shuford, 86 Nor. Car. 144;
Morris *v.* Morris, 94 Id. 616-617.

In *Massachusetts*, where, after the death of the husband, a trust was sought to be enforced by the wife, against his estate, on the ground that she had delivered to him, in his lifetime, some $900, to invest for her benefit, and that he had failed to make such investment, relief, in 1873, was *denied*, in the absence of all other evidence than that the money so delivered was the separate estate of the wife.

It was said by *Gray*, C. J.: "A husband and wife cannot make contracts with each other, and although he may doubtless be a trustee for her, when a wife, *with her own hand*, pays money of her separate estate to her husband, there is no presumption that he receives it in trust for her, but the burden is on her to prove the fact."

Jacobs *v.* Hesler, 113 Mass. 157.

*The invalidity of contracts between husband and wife*, was then firmly established in Massachusetts.

Bassett *v.* Bassett, 112 Id. 157.

The equities allowable under the Gen. Stat. of 1884, were not then cognizable.

See Woodward *v.* Spurr, 141 Id. 286–287;
Porter *v.* Wakefield, 146 Id. 27.

Nor had it yet been determined, that a *loan* by the wife to her husband, of money of her separate estate, might be enforced even in chancery.

Atlantic Bank *v.* Tavener, 130 Mass. 407;
Medster *v.* Bonebrake, 108 U. S. 73.

But if the decision in *Jacobs* v. *Hesler* is not to be explained by the state of the local law, at the time that decision was rendered, it seems, nevertheless, to be now settled, that delivery *and intention* are essential, in that State, to the creation of such gifts of personal property as may be there lawfully made between husband and wife.

Marshall *v.* Jaquith, 134 Mass. 138.

Of such of the personalty of the wife *as formed no part of her separate estate*, the husband, in *Connecticut*, by Act of 1868, was rendered her statutory trustee, with power to receive and enjoy the *income*, and, *with her consent in writing*, to apply the *principal*, also.

Williams *v.* King, 43 Conn. 572–573;
Comstock's Appeal, 55 Id. 222.

A recent writer, referring to the tendency of modern legislation, in respect to the property of married women, and the influence of such legislation in de-

termining, where it exists, the effect to be given to the receipt or possession by the husband of the separate estate of his wife, recognizes some conflict of authority, in this "transition period."—"States which abide by the common law of coverture," he observes, "inclining to sustain this ancient right of reduction into possession, and presuming in his favor; and States, on the other hand, under the impress of the new legislative policy, reserving her title, unless she plainly and voluntarily divests herself of her separate rights."

Schouler *v.* Husb. & Wife., Sec. 285.

But wherever, in recent American decision, a gift from the wife to her husband has been presumed or upheld, without statutory requirement, or common law compulsions, it will be found, it is believed, *that there was an intention, on the part of the husband to appropriate to his own use, the property of the wife; that such appropriation was effected with her entire knowledge and acquiescence, express or implied; and that the character and value of the property were such as to raise no inference against the free and voluntary nature of her donation.*

Where, *by virtue of the marital relation*, the husband is empowered to acquire title to the property

of the wife, "he must not only take exclusive control of it, but must do some act evincing a clear intention to make the property his, as against her and her rights."

White et ux. *v.* Waite, 47 Vert., 508;
Perry *v.* Wheelock, 49 Id., 67;
Moulton *v.* Haley, 57 N. H., 184;
Newton *v.* Taylor, 32 Ohio St., 414;
Hicks *v.* Skinner, 71 Nor. Car., 539.

That in managing and investing, in his individual name, the estate of his wife, Mr. Stickney did not suppose that he had converted it to his personal use, is abundantly shown, by his repeated admissions to those with whom he enjoyed the most intimate and extensive relations in business. (Ante, pp. 7-8.)

Such admissions, in disparagement of the title of the declarant, must be accepted as evidence against those who claim under him, by operation of law.

1 Greenl. Ev., § 109.

And they have always been regarded as of great significance, in controversies arising over supposed donations from the wife to her husband.

Bergey's Appeal, 60 Pa. St., 417;
Moyer's Appeal, 77 Id., 474.

The acts and intentions of Mr. Stickney are to be viewed in connection with these open acknowledg-

ments of the beneficial title of the wife to her moneys in his hands.

"His conduct is consistent alone with the theory that he acted as her agent, and, as such, received the moneys in question."

Patten *v.* Patten et al. 75 Ill., 451–452.

"The investment of the moneys in his own name, was a mistake, which, in equity, took nothing from the wife, and gave nothing to the husband. In what the husband did, there was no intent to appropriate the money to himself."

Fresch *v.* Wirtz, 34 New J., Eq. 129.

"The husband is presumed to know the law, and if he does not restore," to the wife, "all the money that is hers, it must be presumed that he intends what the law requires of him, that he will stand as her debtor for the amount received, and that his estate will so answer."

Young's Estate, 65 Pa. St. 104–105.

See, also, Brookville Nat. Bk. *v.* Kimble et al; 76 Ind. 201.

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The presumption of a gift from the appellee to her husband, to be indulged in the present controversy,

must extend to the donation, not merely of the *income*, or of some reasonable and particular *portion of the capital*, of her estate, but of the *corpus*, *in solido*, of her patrimony, embracing her entire worldly possessions, and amounting (upon the basis assumed in the Report of the Auditor,) to nearly $80,000.

And *this*, to the disinherison of her issue.

The items embraced in the gift, if any, from Mrs. Stickney to her husband, cover the period intervening between the month of January, 1870, and the ~~9th~~ 23d day of December, 1879, both inclusive. (Ante, p. 30, Rec. Sched. A, pp. 50–52.)

The death of their son occurred on July 20, 1880, in the 28th year of his age. (Ante, p. 6; Bill, Par. 9, Rec. p. 3; Rec. p. 82, f. 193.)

A gift of this nature, *if established by proof*, would be regarded with much jealousy, in a court of equity.

"No such donation is ever supported, unless it satisfactorily appears that it is not tainted with the influence springing out of the [*marital*] relation, and that it could properly and prudently be made by the donor; and that in the exercise of the good faith and diligence which the husband and trustee must exercise for the protection of the wife and *cestui que trust*, it was such a donation as he could conscientiously, 'free from the taint of selfish interest,' have

permitted to be made to another for whom the wife or *cestui que trust* had an affection that would stand as a reason for the gift."

Smyley *v.* Rees, 33 Ala. 101;
Boyd *v.* De La Montaguie,
and Cases cited *supra*, p. 36.

And, *a fortiori*, a gift of this nature will never be presumed, in a court of equity, *in the absence of proof*.

It can serve no useful purpose to examine those portions of the evidence which relate to the resources possessed by Mr. Stickney, in his own right, either before, (Ante, p. 4, Post, p. 59,) or after, (Ante, p. 12, Post, p. 64,) the death of Mr. Kendall.

If it be conceded that the husband, during the coverture, was without considerable means of his own, the conviction is immediate, that the moneys deposited to his private account, were those which were derived from the distributive share of his wife, in the estate of her father.

If it be admitted that the husband, during the coverture, was possessed of an abundant, or even of a comfortable property, or revenue, of his own, —the necessity for his expenditure of the separate estate of his wife—the presumption of her gift of that estate, in increase of his fortune,—must be largely diminished, if not wholly dispelled.

And the obligation of the husband to provide for the maintenance of the wife, is not avoided, it may be added, by her possession of a separate estate.

Hodgens *v.* Hodgens, 4 Cl. & F. 323;
Dodge *v.* Knowles, 114 U. S. 430;
Wells' Sep. Est. Mar. Wom. sec. 35.

It has already been shown, that the Appellee had requested her husband to invest, in her own name, the proceeds of her separate estate, (Ante, p. 7,) that she had reposed in the confidence, (Ante, p. 9,) and was justified, in law, in believing, (Ante, p. 40,) that her wishes had been respected; and that, so far from having acquiesced, in any conversion by the husband of her moneys, to his own exclusive use, she had remained ignorant in fact, until after his decease, that such moneys had been invested in any other name than her own. (Ante, p. 9.)

Against the presumption of a gift, in the present controversy, the following considerations are recapitulated, as, apparently, conclusive:

1. Upon general principles of equity, no presumption of a gift from the wife to her husband, arises, *inter sese*, merely from his possession and control of her separate estate.

2. The moneys of the Appellee *never came into her possession*, but were paid *by the executors*, of whom her husband was one, *directly to himself*.

3. The nature and value of the separate estate of the wife, create a presumption against her free and voluntary transfer of the whole of that estate to her husband.

4. This adverse presumption is strengthened by the circumstance, that the exclusion of her only child, would follow from such transfer.

5. The special and particular requests of the wife to her husband, to invest her separate estate, in her own name, negative every intention, on her part, to renounce title in his favor.

6. The voluntary admissions by the husband, that the beneficial interest of the wife was unaltered, though the fund stood in his own name, negative every intention, on his part, to appropriate the fund to his exclusive use.

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It may truly be said: "there is no ground to presume that the husband ever intended to convert the wife's estate, or its proceeds, to his own use, or that any act of hers sanctioned such conversion."

Miller *et al. v.* Edwards, &c., 7 Bush (Ky.)398.

And *that mutuality of consent and concurrence of wills*, which are essential to the creation of title, *by gift*, (Ante, p. 34,) are here wholly wanting.

It may be asserted, with some confidence, *that a gift by the wife of her separate estate to her husband, has never been established, under such circumstances as are disclosed in the present controversy.*

And it is not too much to suppose, it must be felt by this supreme tribunal, that the decree below admits of no disturbance, except through the sanction of principles well calculated to alarm society and to revolutionize the relations between husband and wife.

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The length of the period in which Mr. Stickney remained in the possession and control of the separate estate of his wife, ceases to be significant, when it is remembered, that his collection of the moneys of that estate, extended through nearly the whole of

that period; that his acknowledgments of the unaltered beneficial interest of his wife, in the fund, were openly repeated until a short time before his death, and that it was only after his decease, that the appellee was made aware that her estate had been invested in any other name than her own.

And these considerations are as applicable to the *defense of the statute of limitations*, raised in the answer (Rec. p. 27, par. 14,) as to the question of donation *vel non*, involved in the merits of the controversy.

The attitude and conduct of Mrs. Stickney towards her husband, in his lifetime, were such as belonged to the character ascribed to her in the evidence. (Rec. p. 82, f. 193.)

"There has been no *laches*, nor any acquiescence, on her part, to defeat her rights."

Keller *v.* Keller et al., 45 Md. 275.

She could maintain, in this District, no action *at law* against her husband.

Nor, though satisfied, that, contrary to her directions, he had invested her estate in his own name, would she have been obliged to proceed against him, *in equity*, within the strict period of limitation prescribed for courts of law.

"To say that because a wife does not institute proceedings promptly against her husband, to enforce against him her equitable claim, she is to be considered as guilty of such gross laches in prosecuting her rights, or of such long and unreasonable acquiescence in the assertion of adverse rights, that equity will refuse to interfere in her behalf, is to establish a principle but little calculated to preserve the peace and harmony which should exist between husband and wife."

Bowie *v.* Stonestreet, 6 Md. 432;
Oswald et al. *v.* Hoover, 43 Id. 368–369;
See, also, Comstock's Appeal, 55 Conn. 222;
McLaren *v.* Hall, 26 Iowa 305;
Rogers *v.* Bank of Pike Co., 69 Missou. 564–565.

It is impossible to suppose, that the rights of the appellee could be injuriously affected by the lapse of that time in which she remained without suspicion of an adverse claim against them.

"It would shock that sense of right which must be felt," says *Marshall*, C. J., "equally by legislators and judges, if a possession which was permissive and entirely consistent with the title of another, should silently bar that title."

Kirk *v.* Smith, 9 Wheat. 288.

*Hence*, "the general rule is, that when a trustee unequivocally repudiates the trust, and claims to hold the estate as his own, and such repudiation and claim are brought to the knowledge of the *cestui que trust*, in such manner that he is called upon to assert his rights, the statute of limitations will begin to run against him from the time such knowledge is brought home to him, *and not before.*"

U. S. *v.* Taylor, 104 U. S. 222;
Bacon *v.* Rives, 106 Id. 107;
Philippi *v.* Philippi, 115 Id. 157.

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JOHN SELDEN,
*Counsel for Appellee.*

## Appendix A.

*As to the means of Mr. Stickney, in the lifetime of Mr. Kendall.*

The record fails, when critically examined, to disclose that Mr. Stickney was the owner of any property *acquired by his own means*, in the lifetime of Mr. Kendall.

The want of recollection and absence of information which pervade the answers given by the two non-resident brothers of Mr. Stickney, to the ×-Interrogatories propounded by the complainant below, are in some contrast with the extended statements contained in the answers given by the same witnesses, when examined upon the interrogatories in Chief. (Id. pp. 34–38; 42–44.)

An explanation of the attitude of these witnesses, may be found, perhaps, in the feelings with which, at the time of their examination, they recalled the relinquishment, without a struggle, of their claims against the estate. (Id. p. 36, f. 85; p. 38, f. 89; p. 43, f. 101; p. 44, f. 103.)

The statements themselves,—to which timely exception was taken, (Id. p. 32, f. 76, p. 40, f. 94,)—

are but *hearsay*, in its most incompetent and objectionable form.

And they are shown to be, in large measure, inaccurate or misleading.

Thus, the *Telegraph Stock* held by Mr. Stickney, (Id. p. 35, f. 83; p. 43, top,) was that which had been given to his wife, by her father. (Id. p. 57, f. 132; p. 63, f. 148; p. 65, f. 153.)

The *Journal of Commerce Stock*, (Id. p. 36, top; p. 42, f. 99), is shown, by entries in the handwriting of Mr. Stickney, to have been acquired after the death of Mr Kendall. (Id. p. 86, f. 204.)

Mr. Stickney, from the time he entered into the service of Mr. Kendall, received no *salary* from any other source, until July 22, 1871. (Complnt's Ex. No. 7, Id. pp. 113–114.)

The *Real Estate* (Id. p. 35, ff. 84–85; p. 42, ff. 98–99), which had been acquired by Mr. Stickney, before the decease of his father-in-law, consisted of the H Street property and the M Street property. (Id. p. 99, f. 232.)

The former, composed of lots 41 and 45, in Square 624 (Id. p. 64, f. 149; p. 77, f. 182), was acquired, as alleged in the bill, (Id. p. 3, f. 6,) in 1857, and, in April, 1883, a quarter of a century after, was valued by the Auditor, upon the evidence before him, at $5,300. (Id. p. 52, f. 122.)

The latter, being improved lots in square 448, (Id. p. 64, f. 149; p. 68, f. 159, *passim*,) was acquired, as

alleged in the bill, in September, 1868, (Id. p. 3, f. 7), and was valued by the Auditor at $19,000. (Id. p. 52, f. 122.)

It was the declaration of Mr. Stickney,—against his interest,—in his lifetime, that the M street property had been acquired with money furnished by Mr. Kendall. (Id. 76 ff. 178–179.)

To his daughter, Mrs. Stickney, Mr. Kendall had given $10,000, in Telegraph Stock. (Id. p. 57, f. 132, p. 65, f. 153.)

Upon the death of her father, she had been found indebted to him, in the sum of $16,037.57, evidenced by her personal note, (Id. p. 108, third item from top,) and this note, agreeably to the provisions of the will of Mr. Kendall, (Ante, p. 5,) had been charged against her, by his executors. (Id. p. 111, f. 254, p. 112, f. 255.)

And the *stock*,—from which she derived no benefit,—(Id. p. 95, f. 223,) and the *money evidenced by her note*, may well be supposed, as charged in the bill, (Id. p. 3, ff. 6–7,) to have furnished Mr. Stickney with most, if not all, of the means of acquiring, not only the M-Street property, as admitted by him, in his lifetime, (Id. p. 76, ff. 178–179,) but the H-Street property also.

The two witnesses for the defendants below, concur, indeed, in the statement, that Mr. Stickney, on the eve of sailing for Europe, devoted a $5,000 bond, or $5,000 in bonds, to the purchase of a house for his father. (Id. p. 36, f. 86, pp. 42–43; p. 44, ff. 99–100.)

The date of this transaction is approximated by only one of these witnesses, who fixes upon "1864 or 1865." (Id. p. 36, f. 85.)

One of the witnesses describes $5,000 in bonds as taken "from a package *of bonds*," which had been put up by Mr. Stickney, to be left for safe-keeping with the other witness, during the absence of Mr. Stickney from the country. (Id. p. 42, ff. 99–100.)

The witness with whom the bundle was deposited, describes a $5,000 $\frac{5}{20}$ U. S. Bond, as taken from "a package *containing from* $70,000 *to* $73,000, *in stocks, bonds and notes*," which Mr. Stickney "*said was his property.*" (Id. p. 36, f. 85.)

Mr. Kendall largely depended upon Mr. Stickney, (Id. p. 89, f. 209,) who was his man of business, and much trusted as such. (Id. 99, f. 231.)

The witness who, on December 29, 1882, (Id. p. 38, f. 91,) testified that, in 1865, 17 years before, Mr. Stickney, when about to sail for Europe, had said that this valuable package *was his own*, may well be supposed to have been mistaken in his recollection.

Mrs. Stickney, who was with her husband, when the trip,—the expenses of which were paid by Mr. Kendall—(Id. 98, f. 229,)—was about to begin, says: "Mr. Stickney had not a large amount of money with him, *unless it was father's money.*" (Id. Ib.)

The evidence, at large, fails to show, that Mr. Stickney was in any position to accumulate as much as $70,000, so early as 1866 or 1867.

The money expended in securing a home for the father of Mr. Stickney, amounted, in all, it is said, to $6,700, and was advanced by Mr. Stickney alone. (Ans. to × int. 22, p. 38.)

The advance, however, was in the nature of a *loan*.

The title to the property was taken in the name of the son, (Ans. to × int. 24, p. 38) and, upon the death of the father, on Nov. 22, 1869, (Id. Ib.) the property, by the direction of the son, was sold for $4,750, cash, which was paid to himself. (Id. p. 36, f. 86, Ans. to × int. 26, p. 38.)

## Appendix B.

*As to the resources of Mr. Stickney, after the death of Mr. Kendall, and the value of the estate left by the former.*

*Ten days* after the death of Mr. Kendall, there had been paid to Mr. Stickney, by himself and *Mr. Fox*, as Executors, (Id. p. 53, f. 125; pp. 63–64; 97, top,) on account of the distributive share of Mrs. Stickney, in the estate of her father, *bonds* of the value of $23,700, (Id. p. 111, f. 254), and, on the same account, before the 10th of January, 1880, in cash, or its equivalent, the aggregate sum (Id. p. 112, f. 255) of..... $81,341.54

From 1870 to 1881, inclusive, money was worth, in this District, from 8 to 8½ per cent., (Id. p. 82, f. 194; see, p. 72, ff. 168–169), per annum.

Interest @ 8 per cent. per annum, *upon the fifty-three debits contained in Schedule A.*, (Id. p. 49, f. 115; pp. 50–52), from the time of the receipt by Mr. Stickney of the moneys represented by those debits, until his death, on October 13, 1881, exceeds the sum of..... $57,500.00

| | | | |
|---|---|---|---|
| As one of the Executors of Mr. Kendall, Mr. Stickney had received, in *commissions*, ½ of $21,186.74 (Id. p. 111, f. 254,) or..... | | | $10,593.37 |
| And, in *salaries*, between July 22, 1871, and October 13, 1881, (Id. p. 114, f. 258,) | | | $38,510.17 |
| The aggregate, (*inclusive of interest only upon the debits in Schedule A.*), may be stated as..... | | | $187,945.08 |
| The average annual income derivable, for 12 years, from the *interest*, ($57,500,) calculated as above, was over..... | $4,791 | | |
| And that from *commissions*, ($10,593.37,) and *salaries*, ($38,510.17), *together*, over..... | $4,091 | $8,882 | |
| But simple in habit, frugal of expenditure, and assisted by an admirable and economical wife, Mr. Stickney restrained, it is supposed, his family expenses, within the limit of $3,000, per annum (Rec. p. 82, ff. 192-193), or, in 12 years, within the sum of.... | $36,000 | | |
| To his wife (Id. p. 52, f. 121, p. 58, f. 136,) he had given | $600 | | |
| And at her request, and out of her estate, (Id. p. 52, f. 121; p. 69, p. 97,) to their son..... | $1,000 | $1,600 | $37,600.00 |

From the moneys received, and, under prudent management, *receivable*, by Mr. Stickney, after the death of Mr. Kendall, there should have been left by the former, an unexpended balance of ..... $150,345.08

But the H-Street and the M-Street properties, whereof Mr. Stickney died seised, he had acquired in the lifetime of his father-in-law, and the aggregate value of these properties, (Ante, pp. 60-61,) was..... $24,300.00

And the value of the whole estate that should, with judicious management, have been left by Mr. Stickney, could not have been *less* than..... $174,645.08

Mrs. Stickney had been appointed Administratrix of the personal estate of her husband, on the 11th of November, 1881. (Bill, par. 3, Rec. p. 1; Rec. p. 8, ff. 19-20; p. 62, f. 145.)

The personal estate of Mr. Stickney was correctly appraised by persons appointed for that purpose by the court below, (Id. p. 67, ff. 157-158; pp. 83-84; p. 98, f. 230; p. 112, f. 255;) and a complete inventory of that estate was thereunto returned by his administratrix. (Id. p. 71, f. 166; p. 97, f. 227; p. 112, f. 255.)

| | | |
|---|---|---|
| After deducting debts due by the intestate, and amounting to some $22,000, or $23,000, (Id. p. 97, ff. 227-228; p. 98, f. 230,) and costs and expenses of administration, the balance, for distribution, of the personal estate, as ascertained by the Account of the administratrix filed and *settled* in the probate branch of the court below, (Id. p. 49, f. 115.) and as reported, without exception, by the Auditor, in the present controversy, (Id. p. 50, top; p. 52, bot.,) was..... | $32,202.08 | |
| The value of the entire realty left by Mr. Stickney, as likewise,—and upon most satisfactory evidence,—reported by the Auditor, (Id. p. 49, f. 115; Sched. B. p. 52,) was..... | $53,550.00 | |
| The net value of the entire estate left by Mr. Stickney, was, thus, but..... | | $85,752.08 |
| Leaving unaccounted for, the sum of..... | | $88,893.00 |